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DISCUSSION FOLLOWING THE REMARKS OF MR. RAE

QUESTION, PROFESSOR KING: I want to talk about the shape of the panel. What do you visualize in terms of a panel—environmentalists, industry on both sides? Do you represent consumers like Home Depot and all that?

ANSWER, MR. RAE: If there is no renewal of the Softwood Lumber Agreement, then, presumably, there is a countervailing duty (CVD), not necessarily, not inevitably, but presumably, there would be pressure for one; and there would be an attempt to achieve one. At that point it becomes a trade dispute. Now, does the American congress pass a law because a particular industry insists on a set of different rules with respect to the environment and other issues? I would be surprised if the congress were to do that because that would also apply to the industry, I presume, in the United States. I think there would be several issues that would arise from that.

So my view is that if we are then looking at either a bi-national dispute or a WTO dispute, I think government will have to think long and hard how to get it done because that is where it will be heard.

COMMENT, PROFESSOR KING: Either WTO or under our regular Chapter 19.

QUESTION, MR. WOODS: Has anybody in the industry looked at it from a slightly different angle, or looked at what it will be like ten years from now? If the status quo remains, is there such a thing as an enlightened self-interest in the lumber industry in North America? Could we not look into the future and see the costs of the disputes, the costs of the lumber, the shortages of trees in certain areas of North America? These projections might mean they have to look at other ways and means of accomplishing what they do with lumber now. Has anybody looked at it from that longer-term perspective?

ANSWER, MR. RAE: There are lots of people in the lumber industry looking at how to add more value to what they produce; to being more environmentally sustainable in their practices. There are a lot of people who are in the industry who are worried about that. I think that is very much at work and at stake in the industry.

I do not know what that has to do, however, with what regime one follows in regulating trade between the two countries. The regime that is in place now has a strict volume control, which says Canada can only export so

much to the United States. Now, what happens as a result? Prices are higher and other products become more competitive so homebuilders use steel rather than lumber. Lumber prices are too erratic. The builders do not know what the prices are going to be. They are going to spike up and down; they are not reliable. Other countries replace Canada, which we do not like. So the market share of other countries has grown quite substantially in the last two or three years.

Should both governments be thinking and talking about how to create a sustainable industry on both sides of the border? Yes. Should governments be talking about the type of public policy to introduce to do that? Yes. Should that produce a quota agreement? I cannot think of anything worse.

COMMENT, MR. WOODS: As a follow up, this whole seminar is about dispute settlement. It occurred to me that the two adversaries, or the group of adversaries in the lumber issue might at some point reach a common conclusion about the long term. Maybe the best way to settle some of disputes that we are talking about is not with old-fashioned dispute settlement, but with some broader view of enlightened self-interest for the whole industry.

COMMENT, MR. RAE: I think you are starting to see that happen in several jurisdictions within North America in terms of relationships between the lumber industry, environmentalists, and governments trying to work out better relationships over the longer term. I think that is true. I think the problem with where we are right now is that the United States Trade Representative (USTR) is going to decide whether or not you can have access to our market, and that depends on the kinds of treaties that you have or what you negotiated with your native people 100 years ago. . Is that going to be the new regime? Is the USTR going to follow the environmental rules in order to have access to our market? If that is true, can Canadians then ask: What about your own market and your own treaties? Are we going to go back? What is the logic of this? Where is this going?

This is one of the best examples of the challenges that we face. Once you begin to import, the question becomes: How do you create a process in resolving issues that is fair, which is seen as being applied fairly on both sides of the border? My only argument is that there should be some other tribunal that is created one can talk about that. If I go back over and over again, simply imposing volume restraints in the name of whatever excuse is given, all it does is raise prices and reward those who are running relatively inefficient industries in the home country. That is all it does. It does not do anything else. You can dress it up and call it whatever you like. That is what the net effect is. I do not see that as being positive.

QUESTION, MR. KASOFF: One of the icons of Canada's forest products industry, MacMillan. The American company Weyerhaeuser, recently purchased Bloedel. My question to you is what do you think might be the political economic impact of this softwood lumber debate when you have this kind of integration taking place? It would be ironic that warehouse might lobby the American government for not having a quota-based agreement because it would be against the interest of the warehouse company? What are your thoughts on that?

ANSWER, MR. RAE: I think it is too early to tell exactly what the impact is. I have no doubt, personally, that over time the impact of greater integration will be a greater desire on the part of the industry for clearer and more transparent rules, rules that allow them to make decisions based on the most rational economic basis rather than on what appears to be politically convenient because you have quotas on one side rather than the other.

So, I think that is what will emerge over time. But, if you ask me whether I have noticed warehouse becoming a champion of one particular point of view in the dispute, I would say my observation is, no. That has not happened yet. I think a lot of companies are being very cautious about what they think will emerge. One of the reasons is that to enter into a CVD dispute is a long, grinding, and expensive process; and there are a lot of people who would say rather than get into that, they will negotiate something. I do think the process of integration, as well as the process of globalization makes a quota agreement less and less sustainable. It creates much greater demand for transparency. I am not defending all Canadian public policy. It means the Canadian stumpage policy in the provinces has to be completely transparent. It clearly has to be based on market equivalence.

If we cannot do it on the basis of market, we should certainly be looking constantly for market equivalents; and we should be looking for as much rationality and transparency in that market and environmental sustainability as we can find. There is no reason for us not to look for those things, and those policies should all be subject to intense scrutiny and public debate. They should not be an excuse for imposing a quota.

